

Remarks

In response to the Office Action dated March 25, 2008 and the Notice of Abandonment dated October 1, 2008, Applicants submit the present amendment and a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. §1.137(b). Favorable consideration of this application is respectfully requested in view of the above amendments and the following remarks.

Claims 1-9 are pending in the applications. Claims 1-9 have been rejected. Claims 1-9 have been cancelled without prejudice. New claims 11-13 have been added. Support for the language in new claims 11-13 can be found in the specification, e.g., page 3, lines 4-17 and lines 32-35, page 5, lines 1-9 and lines 13-18. In particular, Applicants submit that there is written support for the recitation in claim 11 of the acid/solvent combination (c) phosphorus pentoxide/dimethylformamide (DMF). In this regard, the specification on page 5, lines 13-15 indicate that a suitable acid/organic solvent combination can be a protic acid anhydride and a polar coordinating solvent such as DMF. While the specification does not expressly state the specific combination of phosphorus pentoxide and DMF, one skilled in the art would consider phosphorus pentoxide to be a protic acid anhydride and thus phosphorus pentoxide as a protic anhydride can be combined with the polar coordinating solvent, DMF. In addition, the specification on page 5, lines 17-18 also specifically states the acid/solvent combination polyphosphoric acid/DMF. As it is also known in the art that with phosphoric acid, condensation can proceed (elimination of water) to form triphosphoric acid (a polyphosphoric acid) and then phosphorus pentoxide, one skilled in the art would have a reasonable basis to believe that phosphorus pentoxide/DMF as polyphosphoric acid/DMF would also work in the present method. In view of the above, it is believed that the recitation in claim 11 of the specific combination of phosphorus pentoxide/DMF is supported by the specification.

Claims 3, 7 and 9 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In particular, the Examiner questions the meaning of the phrase “protic acid derivative.”

As stated above, claims 1-9 have been cancelled without prejudice and new claims 11-13 have been added which do not contain the phrase “protic acid derivative.” Accordingly, the rejection of claims 3, 7, 9 under 35 U.S.C. §112, second paragraph, no longer applies.

In view of the above, withdrawal of the rejection of claims 3, 7, 9 under 35 U.S.C. §112, second paragraph, is respectfully requested.

Claims 1-6 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,062,848 (van der Burg). The Examiner states *inter alia*:

Van der Burg teaches example I, in column 11, lines 10-26. This example teaches the rings closing of reaction of a compound of formula I where variable X is OH to mirtazapine in the presence of concentrated sulfuric acid. In further support of this, example XIX (column 20, lines 5-35) teach enantiomeric resolution of mirtazapine. Example XIX also teaches the mixing of tartaric acid (an organic acid) in ethanol (a polar protic organic solvent) in the purification of mirtazapine. After this step, the product is washed with ammonia and extracted with diethyl ether, evaporated, and crystallized with petroleum ether. Thus claims 1-3 and 6 are anticipated. Claim 4 is anticipated because Van der Burg suggest that polyphosphoric acid can also be used...Claims 5 is anticipated due to teachings from *in re Aller*....

As stated above, claims 1-6 have been cancelled without prejudice and new claims 11-13 have been added. Accordingly, this rejection of claims 1-6 no longer applies. It is also submitted that new claims 11-13 are patentable over van der Burg as there is no teaching or specific suggestion in van der Burg of the acid or acid/solvent combinations as set forth in claim 11, a-c.

With respect to the Examiner’s statement that WO00/62782 is also considered prior art for claims 1-6, as stated above claims 1-6 have been cancelled and new claims 11-13 have been added. It is submitted that claims 11-13 are patentable over WO00/62782 in that there is no teaching of the acid or acid/solvent combination as recited in claim 11, a-c.

In view of the above, withdrawal of the rejection of claims 1-6 under 35 U.S.C. §102(b) is respectfully requested.

Claim 8 has been rejected under 35 U.S.C. §103(a) as being unpatentable over van der Burg.

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Reply to Office Action of March 25, 2008

Docket No.: 2003.796US

As stated above, claim 8 has been cancelled without prejudice and thus the rejection of claim 8 no longer applies.

In view of the above, withdrawal of the rejection of claim 8 under 35 U.S.C. §103(a) is respectfully requested.

A good faith effort has been made to place the present application in condition for allowance. If the Examiner believes a telephone conference would be of value, he is requested to call the undersigned at the number listed below.

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Respectfully submitted,

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